

ORDINANCE NO. 144

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, RELATING TO TRANSPORTATION DEMAND MANAGEMENT, ADOPTING A COMMUTE TRIP REDUCTION ("CTR") PLAN, AND ADOPTING IMPLEMENTING MEASURES FOR PUBLIC AND PRIVATE EMPLOYERS WITH ONE HUNDRED OR MORE EMPLOYEES WORKING WITHIN THE CITY AS WELL AS FOR THE MUNICIPAL GOVERNMENT ITSELF AS REQUIRED BY CHAPTER 70.94 RCW; AND REPEALING ORDINANCE NO. 72

WHEREAS, motor vehicle traffic is a major source of emissions that pollute the air, and air pollution causes significant harm to public health and degrades the quality of the environment; and

WHEREAS, increasing motor vehicle traffic aggravates traffic congestion in the City of Shoreline; and

WHEREAS, traffic congestion imposes significant costs on City business, government, and individuals in terms of lost working hours and delays in the delivery of goods and services as well as making the City a less desirable place to live, work, visit and do business; and

WHEREAS, capital and environmental costs of fully accommodating the existing and projected motor vehicle traffic on roads and highways are prohibitive while decreasing the demand for vehicle trips is significantly less costly and is at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities; and

WHEREAS, the City of Shoreline recognizes the importance of increasing individual citizens' awareness of air quality, energy consumption, and traffic congestion and the contribution individual actions can make toward addressing these issues;

WHEREAS, employers have significant opportunities to encourage and facilitate the reduction of single-occupant vehicle commuting by employees; and

WHEREAS, State policy, as set forth in RCW 70.94.521-.551 and the CTR Task Force Guidelines, requires the City of Shoreline to develop and implement a plan to reduce single occupant vehicle commute trips; and

WHEREAS, the plan must require affected employers to implement programs to reduce vehicle miles traveled per employee and the number of single-occupant vehicles used for commuting purposes by their employees; and

WHEREAS, a transportation demand management element such as this Ordinance is required pursuant to RCW 36.70A.070(6)(e), the Washington State Growth Management Act; and

WHEREAS, adoption of this Ordinance will promote the public health, safety, and general welfare within the City of Shoreline and the region; and

WHEREAS, this Ordinance is consistent with the CTR Task Force Guidelines established under RCW 70.94.537(2);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply in the interpretation and enforcement of this Ordinance:

"Affected Employee" means a full-time employee who is scheduled to begin his or her regular work day at a single worksite between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays per week for at least twelve continuous months. For the purposes of this Chapter, shareholders, principals and associates in a corporation, partners (general or limited) in a partnership and participants in a joint venture are considered employees.

"Affected Employer" means a public or private employer that, for twelve continuous months, employs 100 or more full-time employees at a single worksite who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays. The individual employees may vary during the year. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition.

"Alternative Commute Mode" means any type of commute transportation other than that in which the single-occupant motor vehicle is the dominant mode, including telecommuting and compressed work weeks if they result in reducing commute trips.

"Alternative Work Schedules" means programs such as compressed work weeks that eliminate work trips for affected employees.

"Base Year" means the period from January 1, 1992, through December 31, 1992, on which goals for vehicle miles traveled (VMT) per employee and proportion of single occupant vehicle (SOV) trips shall be based.

"City" means the City of Shoreline.

"Commute Trips" means trips made from a worker's home to a worksite with a regularly scheduled arrival time of 6:00 a.m. to 9:00 a.m. (inclusive) on weekdays. "CTR Plan" means the City of Shoreline's plan as set forth in this Chapter to regulate and administer the CTR programs of affected employers within its jurisdiction.

"CTR Program" means an employer's strategies to reduce affected employees' SOV use and VMT per employee.

“CTR Zone” means an area, such as a census tract or combination of census tracts, within Shoreline characterized by similar employment density, population density, level of transit service, parking availability, access to high occupancy vehicle facilities, and other factors that are determined to affect the level of SOV commuting.

"Compressed Work Week" means an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one work day every two weeks by working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and bi-weekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements. Compressed work weeks are understood to be an ongoing arrangement.

"Dominant Mode" means the mode of travel used for the greatest distance of a commute trip.

"Employee" means any person who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer, provided, however, an independent contractor shall not be considered an employee.

"Employer" means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, non-profit, or private, that employs workers.

"Flex-Time" is an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative modes.

"Full-Time Employee" means a person other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks per year for an average of at least 35 hours per week.

“Good Faith Effort” means that an employee has met the minimum requirements identified in RCW 70.94.531 and this ordinance and is working collaboratively with the City to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed upon length of time.

"Implementation" means active pursuit by an employer of the CTR goals of RCW 70.94.521-551 and this Chapter as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to SOV commuting, and commencement of other measures according to their CTR program and schedule.

“Mode” means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle, and walking.

"Peak Period" means the hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

"Peak Period Trip" means any employee trip that delivers the employee to begin his or her regular workday between 6:00 a.m. and 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.

"Proportion of Single-Occupant Vehicle Trips" in "SOV Rate" means the number of commute trips over a set period made by affected employees in SOVs divided by the number of affected employees working during that period.

"Single-Occupant Vehicle (SOV) Trips" means trips made by affected employees in SOVs.

"Single Worksite" means a building or group of buildings on physically, contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way occupied by one or more affected employers.

"Telecommuting" means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.

"Transportation Management Association (TMA)" means a group of employers or an association representing a group of employers in a defined geographic area. A TMA may represent employers within specific city limits, or may have a sphere of influence that extends beyond city limits.

"Vehicle Miles Traveled (VMT) Per Employee" means the sum of the individual vehicle commute trip lengths in miles made by affected employees over a set period divided by the number of affected employees during that period.

"Waiver" means an exemption from CTR program requirements granted to an employer by the City based on unique conditions that apply to the employer or employment.

"Week" means a seven day calendar period, starting on Monday and continuing through Sunday.

"Weekday" means any day of the week except Saturday or Sunday.

Section 2. - Commute Trip Reduction Goals. The commute trip reduction goals for employers affected by this Chapter are to achieve the following reductions in vehicle miles traveled per employee as well as in the proportion of single-occupant vehicles from the measured worksite base year value or the 1992 base year value of North King County's CTR zone:

1. 15 percent reduction after two years.

2. 20 percent reduction after four years.
3. 25 percent reduction after six years.
4. 35 percent reduction after twelve years.

Section 3. Designation of CTR Zone and Base Year Values. There is hereby designated a CTR zone within the City. Affected employers in the City of Shoreline located within the Northwest King County CTR zone designated by the boundaries shown on the Map received in the Office of the City Clerk and marked with Clerk's Receiving No. 113 must comply with the commute trip reduction requirements.

The base year value of this zone for proportion of SOV trips shall be 85 percent. The base year value for vehicle miles traveled (VMT) per employee shall be set at 9.3 miles. Commute trip reduction goals for major employers shall be calculated from these values or the measured worksite base year value. Therefore, affected employers in the City of Shoreline shall establish programs designed to result in SOV rates of not more than 72 percent in 1995, 68 percent in 1997, and 64 percent in 1999 and 55 percent in 2005 and VMT per employee of not more than 7.9 miles in 1995, 7.4 miles in 1997, 7.0 miles in 1999, and 6.0 miles in 2005.

Section 4. Responsible Agency. The City of Shoreline shall be responsible for implementing this Chapter, the CTR Plan and the City's CTR program for its own employees. The City Manager or his or her authorized designee shall have the authority to issue such rules and administrative procedures and delegate authority to other City departments as may be necessary to implement this Chapter.

Section 5. Applicability. The provisions of this Chapter shall apply to any affected employer at any single worksite within the corporate limits of the City of Shoreline. Employees will only be counted at their primary worksite. The following classifications of employees are excluded from the counts of employees: (1) seasonal agricultural employees, including seasonal employees of processors of agricultural products, and (2) employees of construction worksites when the expected duration of the construction is less than two years.

1. Notification of Applicability.
 - A. In addition to Shoreline's established public notification for adoption of an Ordinance, a notice of availability of a summary of this Chapter, a notice of the requirements and criteria for affected employers to comply with this Ordinance, and subsequent revisions shall be published at least once in a newspaper of general circulation of Shoreline within 30 days after adoption of this Ordinance or revisions.
 - B. Within thirty (30) days after adoption of this Ordinance, the City Manager will issue to known affected employers located in Shoreline a formal written notification by certified mail that they are subject to this Ordinance.

C. Affected employers that do not receive notice within 30 days of adoption of this Ordinance must identify themselves to the City Manager within 180 days of the adoption of this Ordinance. Upon identifying themselves within said 180 day period, such employers will be granted 150 days from the date of self-identification within which to develop and submit a CTR program.

D. Any existing employer of 75 or more persons in the City of Shoreline, subsequent to adoption of this Ordinance, will be required to complete an Employer Assessment Form. The Employer Assessment Form will be used to assist the City Manager to determine whether or not an employer will be deemed affected or non-affected in accordance with the provisions of this Ordinance.

2. New Affected Employers.

Employers that fall within the definition of "affected employer" must identify themselves to the City Manager within 180 days of either moving into the boundaries of Shoreline or growing in employment at a worksite to one hundred (100) or more affected employees. Once they identify themselves, such employers shall be granted 150 days to develop and submit a CTR program.

New affected employers shall have two years to meet the first CTR goal of a 15 percent reduction from the base year values; four years to meet the second goal of a 20 percent reduction; six years to meet the third goal of a 25 percent reduction; and 12 years to meet the fourth goal of a 35 percent reduction from the time they begin their program.

3. Change in Status as an Affected Employer.

Any of the following changes in an employer's status will change the employer's CTR program requirements:

A. If an affected employer can document that it faces an extraordinary circumstance that will change its status as an affected employer, it may apply for a full or partial waiver from CTR program requirements pursuant to Section 9 of this Ordinance.

B. If an employer initially designated as an affected employer no longer employs one hundred (100) or more affected employees and has not employed one hundred (100) or more affected employees for the past twelve (12) months, that employer is no longer an affected employer. It is the responsibility of the employer to provide documentation to the City Manager that it is no longer an affected employer. The City Manager shall review such documentation to determine whether the employer is no longer an affected employer.

C. If the same employer returns to the level of one hundred (100) or more affected employees twelve (12) or more months after its change in status to an "unaffected" employer, that employer shall be treated as a new affected employer, and will be subject to the same CTR program requirements as other new affected employers.

Section 6. Requirements for Employers. An affected employer is required to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and SOV commute trips. Employers are required to make a good faith effort as defined in RCW 70.94.534(2) and this ordinance to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and SOV commute trips. The CTR program must include the mandatory elements described below, including submittal of a CTR program description and annual progress report. Transportation management associations may submit CTR program descriptions and annual reports on behalf of employers, however, each affected employer shall remain accountable for the compliance of its CTR program.

1. Description of Employer's CTR Program.

Each affected employer is required to submit a description of its CTR program to the City on an official form available from the Planning Department. At a minimum, the employer's description must include:

- A. General description of each employment site location within the city limits, including transportation characteristics, surrounding services, and unique conditions experienced by the employer or its employees;
- B. Number of employees affected by the CTR program;
- C. Documentation of compliance with the mandatory CTR program elements (as described in subsection B of this section);
- D. Description of the additional elements included in the CTR program; and
- E. Schedule of implementation, assignment of responsibilities, and commitment to provide appropriate resources to carry out the CTR program.

2. Mandatory Program Elements.

Each employer's CTR program shall include the following mandatory elements:

A. **Transportation Coordinator.** The employer shall designate a transportation coordinator to administer the CTR program. The coordinator's and/or designee's name, location, and telephone number must be displayed prominently at each affected worksite. The coordinator shall oversee all elements of the employer's CTR program and act as liaison between the employer and the City of Shoreline.

An affected employer with multiple sites may have one transportation coordinator for all sites.

B. **Information Distribution.** The employer shall provide information about alternatives to SOV commuting to employees at least once a year. This shall consist of, at a minimum, a summary of the employer's program, including the transportation coordinator's name and phone number. Employers must also

provide a summary of their program to all new employees at the time of hire. Each employer's program description and annual report must describe what information is to be distributed by the employer and the method of distribution.

C. Annual Progress Report. The employer's CTR program must include an annual review of employee commuting and of progress toward meeting the SOV reduction goals. Affected employers shall file a progress report annually with the City. The employer shall contact the City Manager for the format of the report. Survey information or alternative information approved by the City Manager must be provided in the reports submitted in the second, fourth, sixth, eighth, tenth, and twelfth years after program implementation begins.

D. Additional Program Elements. In addition to the specific program elements described above, the employer's CTR program shall include a set of measures designed to meet City goals, as described in the City's administrative procedures.

Affected employers shall be required to select two or more measures, which may be from the following list:

- A. Promotional events
- B. Transportation fairs
- C. Commuter information center
- D. Ridematching services
- E. Bicycle training program
- F. Preferential parking for carpools and vanpools
- G. Guaranteed ride home program
- H. Compressed work week
- I. Alternative work schedules
- J. Telecommuting programs
- K. Secure bicycle parking facilities, lockers, changing areas, and showers
- L. Pedestrian facilities or improvements
- M. Signage for residential parking zone
- N. Reduction of SOV parking supply
- O. Discounted HOV parking price
- P. Increase or institution of SOV parking price
- Q. Transportation allowance/voucher
- R. Transportation subsidy or discount
- S. Rideshare bonuses
- T. Carpool subsidy
- U. Carpool fuel incentives
- V. Vanpool sponsorship and subsidies
- W. Fleetpool
- X. Vanpool program
- Y. On-site childcare services
- Z. Shuttle services

AA. Alternative measures approved by the City Manager designed to facilitate the use of high-occupancy vehicles

Specific details and additional instructions for implementation of program measures shall be described in the City's administrative procedures.

Section 7. Record Keeping. Affected employers shall maintain all records required by the City Planning and Community Development Director.

Section 8. Schedule and Process for CTR Reports, Program Review and Implementation.

1. CTR Program. Not more than six months after the adoption of this Chapter, or within six months after an employer becomes subject to the provisions of this Chapter, the employer shall develop a CTR program and shall submit to the City Planning and Community Development Director a description of that program for review.
2. CTR Annual Reporting Date. Employers will be required to submit an annual CTR report to the City Planning and Community Development Director beginning with the first annual reporting date assigned during the initial program submittal. The annual reporting date shall be assigned by the City Planning and Community Development Director and be no less than 12 months from the day the initial program description is submitted. Subsequent years' reports will be due on the same date each year.
3. Content of Annual Report. The annual progress report shall describe each of the CTR measures that were in effect for the previous year, the results of any commuter surveys undertaken during the year, and the number of employees participating in CTR programs. Survey information or alternative information approved by the City Planning and Community Development Director must be provided in the reports submitted in the second, fourth, sixth, eighth, tenth and twelfth years.
4. Program Review. The City Planning and Community Development Director shall notify the employer in writing indicating whether a CTR program was approved or deemed unacceptable.
5. Initial program descriptions will be deemed acceptable if (1) all required information on the program description form is provided, and (2) the program description includes the following information:
 - A. Name, location and telephone number of the Employee Transportation Coordinator for each worksite;
 - B. The employer's plan for documenting regular distribution of information to employees about the employer's CTR program at the worksite, including alternatives to driving alone to work (refer to Section 6.2.B); and
 - C. The employer's plan for implementation of additional measures designed to achieve the applicable goal. The employer must describe with particularity all implementation measures.

6. Annual reports will be deemed acceptable if the annual report form is complete and contains information about implementation of the prior year's program elements and proposed new program elements and implementation schedule. Annual reports must also contain a review of employee commuting and report of progress toward meeting SOV goals.

7. Beginning in 1995, the programs described in the annual reports will be deemed acceptable if either the proportion of SOV trips of the VMT per employee goals have been met. If neither goal has been met, the employer must propose modifications designed to make progress toward the applicable goal in the coming year. If the revised program is not approved, the City Planning and Community Development Director shall propose modifications to the program and direct the employer to revise its program within 30 days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.

8. Implementation of Employer's CTR Program. The employer shall implement the approved CTR program not more than 180 days after the program was first submitted to the City unless the City Planning and Community Development Director grants an extension allowing late implementation. Implementation of programs that have been modified based on non-attainment of CTR goals must occur within 30 days following City approval of such modifications.

Section 9. Requests for Exemptions/Modification of CTR Requirements.

1. Worksite Exemptions. An affected employer may submit a request to the City to grant an exemption from all CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience undue hardship in complying with the requirements of the ordinance as a result of the characteristics of its business, its work force, or its location(s). An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of SOV trips and VMT per employee. Exemptions may be granted by the Planning and Community Development Director at any time based on written notice provided by the affected employer. The notice should clearly explain the conditions for which the affected employer is seeking an exemption from the requirements of the CTR program. The City shall review annually all employers receiving exemptions and shall determine whether the exemption will be in effect during the following program year.

2. Employee Exemptions. Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksite's CTR program. Exemptions may also be granted for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The City will use the criteria identified in the CTR Task Force Guidelines to assess the validity of employee exemption requests. The City shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

3. Goal Modification.

A. An affected employer may request that the City modify its CTR program goals. Such request shall be filed in writing at least 60 days prior to the date which the worksite is required to submit its program description and annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program. The City will review and deny or grant requests for goal modifications in accordance with procedures and criteria identified in the CTR Task Force Guidelines. An employer may not request a modification of the applicable goal until one year after the date of City approval of its initial program description and annual report.

4. All requests for modification of CTR program goals must be made in writing to the City Planning and Community Services Director by certified mail or delivery, return receipt.

5. Modification of CTR Program Elements. If an employer wants to change a particular element of its CTR program during the period of time between annual reporting dates, the employer must make a written request for modification to the City Planning and Community Development Director. The City Planning and Community Development Director shall review and notify the employer in writing whether the request is approved or denied.

6. Extensions. An employer may request additional time to submit a CTR program or CTR annual progress report, to implement required survey, or to implement or modify a program. Such requests shall be made in writing to the City Planning and Community Development Director before the due date for which the extension is being requested. Requests for extensions must be made prior to the due date anytime a program submission is going to be more than one week late. Extensions not to exceed 90 days shall be considered for reasonable causes. Employers will be limited to a total of 90 allowed extension days per year. Extensions shall not exempt an employer from any responsibility for meeting program goals. Extensions granted due to delays or difficulties with any program elements shall not be cause for discontinuing or failing to implement other program elements. An employer's annual reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the City Planning and Community Development Director.

Section 10. Credit For Transportation Demand Management Efforts.

1. Credit for Programs Implemented Prior to the Base Year. Employers with successful TDM programs implemented prior to the 1992 base year may apply to the City of program credit.

A. Employers whose VMT per employee and proportion of SOV trips satisfy the goals for one or more future goal years, and who commit in writing to

continue their current level of effort, shall be exempt from the following year's annual report.

B. Employers applying for the program credit in their initial 1994 program description shall be considered to have met the 1995 CTR goals if their VMT per employee and proportion of SOV trips are equivalent to a 12 percent or greater reduction from the base year zone values. This three percentage point credit applies only to the 1995 CTR goals.

For the initial year, employer requests for program credit are due within three months after notification that the employer is subject to this Chapter. Requests for program credit must be received by the employer's assigned reporting dates in 1995 and 1997 for succeeding years.

Application for a program credit shall include an initial program description, written commitment on an official report form to maintain program elements, and results from a survey of employees, or equivalent information that establishes the applicant's VMT per employee and proportion of SOV trips. The survey or equivalent information shall conform to all applicable standards established in the Director's Rules for implementation of this Chapter.

2. Credit for Alternative Work Schedules, Telecommuting, Bicycling and Walking, by Affected Employees. When calculating the SOV and VMT rates of affected employers, the City will count commute trips eliminated through alternative work schedules, telecommuting options, bicycling and walking as 1.2 vehicles trips eliminated. This assumption applies to both the proportion of SOV trips and VMT per employee.

Section 11. Employer Peer Review Group.

1. Purpose and Appointment of Representatives. The City Public Services Administrator shall appoint representatives from affected employers to regional or subregional employer peer review groups as may be created through interlocal agreement with other jurisdictions. The specific functions of the peer review group shall be determined by the interlocal agreement.

2. Limitations of Peer Review Group. Any peer review group shall be advisory in nature. The City shall not be bound by any comments or recommendations of any peer review group.

Section 12. Appeals of Administrative Decisions.

1. Appeal of Final Decisions. Employers may file a written appeal to the City's Hearing Examiner of the City's final decisions regarding the following actions:

A. Rejection of an employer's proposed program.

B. Denial of an employer's request for a wavier or modification of any of the requirements under this Chapter or a modification of the employer's program.

C. Denial of credits requested under Section 10 of this Chapter.

2. Appeals filed under this section must be filed with the City within twenty (20) days after the employer receives notice of a final decision. Timely appeals shall be heard by the City's Hearing Examiner. Determinations on appeals shall be based on whether the decision being appealed was consistent with the state law.

Section 13. Enforcement.

1. Compliance. For purposes of this section, compliance shall mean fully implementing in good faith all provisions in an approved CTR program.

2. Program Modification Criteria

A. If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, and meets either or both the applicable SOV or VMT goal, the employer has satisfied the objectives of the CTR plan and will not be required to modify its CTR program.

B. If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, but has not met or is not likely to meet the applicable SOV or VMT goal, the City shall work collaboratively with the employer to make modifications to its CTR program. After agreeing on modifications, the employer shall submit a revised CTR program description to the City for approval within 30 days of reaching an agreement.

C. If an employer fails to make a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, and fails to meet either the applicable SOV or VMT reduction goal, the City shall work collaboratively with the employer to identify modifications to the CTR program and shall direct the employer to revise its program within 30 days to incorporate the modifications. In response to the recommended modifications, the employer shall submit a revised CTR program description, including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The City shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, the City will send written notice to that effect to the employer within 30 days and, if necessary, require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the City within ten working days of the conference.

3. Violations. Violation of a provision of this Chapter is a civil infraction for which a monetary penalty may be imposed under this Chapter. The following actions shall constitute a violation of this Ordinance:

A. Failure to implement an approved CTR program, unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed VMT and SOV goals as specified in this Ordinance. Failure to implement a CTR program includes but is not limited to any of the following:

(1.) Failure of any affected employer to submit a complete CTR program within the deadlines specified in Section 8 of this Ordinance;

(2.) Failure to submit required documentation for annual reports;

(3.) Submission of fraudulent data.

B. Failure to modify a CTR program found to be unacceptable by the City under Section 8 of this Ordinance.

C. Failure to perform any activity required by this Chapter relating to implementation of or required modification to a CTR program.

D. Failure to make a good faith effort, as defined in RCW 70.94.534(4) and this ordinance.

3. Penalties.

A. No affected employer with an approved CTR program may be held liable for failure to reach the applicable SOV or VMT goals.

B. Each day of failure by an employer to (a) implement a commute trip reduction program, or (b) modify an unacceptable commute trip reduction program, or (c) fail to perform any activity required by this Chapter relating to implementation of or required modification to a CTR program shall constitute a separate violation and shall be considered a civil infraction. The penalty for a violation shall be \$250 per day.

C. An employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Employers having unionized employees shall be presumed to act in good faith compliance if they: (1) propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and (2) advise the union of the existence of the statute and the mandates of the CTR program approved by the City of Shoreline and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

D. Payment of a monetary penalty pursuant to this Chapter does not relieve an affected employer of the duty to comply with the activities required by this Chapter.

E Nothing in this Chapter limits the right of the City to pursue other civil or equitable remedies it may have to obtain compliance with the activities required by this chapter.

F. A notice of violation and imposition of monetary penalties represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this Chapter.

G. A notice of violation and imposition of monetary penalties shall be served on the affected employer, either personally or by mailing a copy of the notice by certified mail, postage prepaid, return receipt requested to the affected employer at his/her last known address. The person who effected personal service or service by mail shall make proof of service at the time or service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.

4. Appeals of Penalties.

A. An affected employer to whom a notice of violation and imposition of monetary penalties is directed may appeal the notice including the determination that a violation exists or may appeal the amount of any monetary penalty imposed to the City Hearing Examiner.

B. An affected employer may appeal a notice of violation by filing a written notice of appeal with the Department of Planning and Community Development within seven calendar days from the date of service of the notice of violation and imposition of monetary penalties.

C. The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the Hearing Examiner may impose a daily monetary penalty from the date of service of the Notice of Civil Infraction if he finds that the appeal is frivolous or intended solely to delay compliance.

D. The hearing before the Hearing Examiner shall be conducted as follows:

(1.) The Hearing Examiner shall give notice of the hearing before the Hearing Examiner to the appellant at least seventeen calendar days before such hearing.

(2.) The Hearing Examiner shall conduct a hearing on the appeal pursuant to the rules of procedure as provided by the Administrative Procedure Act Chapter 34.05 RCW. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a preponderance of the evidence that a violation has occurred.

E. The Hearing Examiner shall determine whether the City has proved by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend or modify the amount of any monetary penalty imposed by the notice of civil violation with or without written conditions.

F. The Hearing Examiner shall consider the following in making his/her determination:

- (1.) Whether the intent of the appeal was to delay compliance, or
- (2.) Whether the appeal is frivolous, or
- (3.) Whether the appellant exercised reasonable the timely effort to comply with applicable requirements, or
- (4.) Any other relevant factors.

G. The Hearing Examiner shall mail a copy of his decision to the appellant by certified mail, postage prepaid, return receipt requested.

H. The decision of the Hearing Examiner may be reviewed for illegal, corrupt or arbitrary or capricious action in King County Superior Court. The petition for review must be filed within thirty (30) calendar days of the final decision of the Hearing Examiner.

I. The collection of the monetary penalty shall be as follows:

- (1.) The monetary penalty constitutes a personal obligation of the person to whom the civil infraction is directed. Any monetary penalty assessed must be paid to the City Clerk within seven (7) calendar days from the date of service of notice of violation and imposition of monetary penalties or, if an appeal was filed pursuant to this Chapter, within seven (7) calendar days of the Hearing Examiner's decision.
- (2.) The City Attorney, on behalf of the City, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per them monetary penalties so long as the violation continues.
- (3.) In the event of failure to appear at a hearing provided herein, the Hearing Examiner shall assess the monetary penalty prescribed and a penalty of twenty-five (\$25) dollars.
- (4.) In the event of a conflict between this Chapter and any other city ordinance providing for a civil penalty, this Chapter shall control.

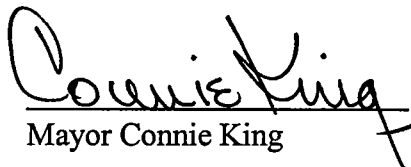
J. A person who willfully fails to pay a monetary penalty as required by provisions of this Chapter may be found in civil contempt of court after notice and hearing.

Section 14. Severability. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

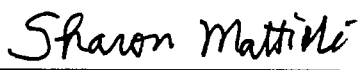
Section 15. Repealer. Ordinance No. 72 is hereby repealed.

Section 16. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City and shall take effect and be in full force (5) days after the date of publication.


PASSED BY THE CITY COUNCIL ON DECEMBER 1, 1997.


Mayor Connie King

ATTEST:


Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:


Bruce L. Disend
City Attorney

Date of Publication: December 5, 1997
Effective Date: December 10, 1997